

**STATE OF HAWAII
DEPARTMENT OF LABOR AND INDUSTRIAL RELATIONS**

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February 28, 2018

To: The Honorable Donovan M. Dela Cruz, Chair,
The Honorable Gilbert S.C. Keith-Agaran, Vice-Chair, and
Members of the Senate Committee on Ways and Means

Date: Wednesday, February 28, 2018

Time: 10:45 a.m.

Place: Conference Room 211, State Capitol

From: Leonard Hoshijo, Director
Department of Labor and Industrial Relations (DLIR)

Re: S.B. 3023 SD1 RELATING TO MINIMUM WAGE

I. OVERVIEW OF PROPOSED LEGISLATION

This proposal amends the definition of a “Qualified community rehabilitation program” under section 103D-1001, Hawaii Revised Statutes (HRS), of the Hawaii Public Procurement Code, by repealing the reference to section 387-9, HRS. This measure also repeals the provision in section 387-9(2), HRS, for employing persons with intellectual disabilities at wages lower than the statutory minimum wage.

DLIR provides comments on this measure.

II. CURRENT LAW

Section 103D-1001, HRS, provides for preference in procurement for a bona-fide “Qualified Community Rehabilitation Program” which means a nonprofit community rehabilitation program for persons with disabilities that meets certain requirements. One of the requirements is that the nonprofit be certified by the DLIR under section 387-9, HRS, relating to employment of persons with disabilities.

Section 387-9, HRS, allows both persons and clients with intellectual disabilities, the latter at sheltered workshops, to be employed under special certificates issued by the Director at wages lower than the minimum wage for a period stated in the special certificates.

III. COMMENTS ON THE SENATE BILL

Currently, there are seven sheltered workshops statewide with an active special certificate permitting the payment of wages lower than the statutory minimum wage to clients with intellectual disabilities. These sheltered workshops collectively employ approximately 75 individuals.

Prior to issuing a special certificate to the sheltered workshop, DLIR reviews the employer's time records, payroll records, and time study information to determine whether the employer is complying with wage laws and certifying the proposed wages are commensurate with that person's productivity.

Generally, a special certificate is valid for one year and a renewal application is filed annually.

DLIR notes that the measure, as drafted, obviates the need for a special certificate since the Director would not be granting any exception to the law.



Randy Perreira
President

HAWAII STATE AFL-CIO

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The Twenty-Ninth Legislature, State of Hawaii
Hawaii State Senate
Committee on Ways and Means

Testimony by
Hawaii State AFL-CIO

February 28, 2018

S.B. 3023, S.D.1 – RELATING TO
THE MINIMUM WAGE

The Hawaii State AFL-CIO supports S.B. 3023, S.D.1 which includes persons with disabilities under the minimum wage requirements.

The Hawaii State AFL-CIO recognizes some workers could potentially be paid below the minimum wage under certain circumstances. Often times, this can be very emotional and challenging for the employee and employer and as a result, we hope that a solution can be developed that helps level the playing field for all workers while taking into account everyone's perspective.

Thank you for the opportunity to testify.

Respectfully submitted,

Randy Perreira
President

SB-3023-SD-1

Submitted on: 2/23/2018 5:39:14 PM

Testimony for WAM on 2/28/2018 10:45:00 AM

Submitted By	Organization	Testifier Position	Present at Hearing
Louis Erteschik	Testifying for Hawaii Disability Rights Center	Comments	No

Comments:

We certainly support the concept of this bill. There are a lot of preconceived notions about individuals with disabilities and so people often assume they are less capable than they are. Not so long ago people thought they could not live outside of institutions and now they do, very successfully here in Hawaii. Employment is the next frontier of community integration and if we can overcome the old assumptions, more and more people will be integrated into the work environment, just as they are now integrated in their housing. Employing people with disabilities at a competitive wage is a high national and local priority. We do have some concerns though that the Committee should consider. Despite the best intentions and efforts of everyone, there may well be some individuals with disabilities who are not capable of full competitive employment. That is just a fact and while it may not be the politically correct thing for a disability rights organization to state it nonetheless is the truth.

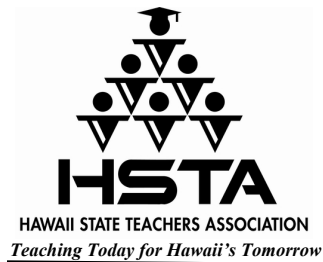
So, the question then is “what happens to these people”. Under current law there are some limited situations where an employer is permitted to pay an individual with a disability a sub minimum wage. In Hawaii we believe there are approximately 50 people who fit this category. The trend nationally and locally is clearly to phase out “these sheltered workshops” and that is a good thing certainly. People with disabilities are entitled to earn a fair day’s pay for a day’s work as anyone should. However, in some cases what will simply happen if the sub minimum wage is eliminated is that these people will not be employed at all. Is that a good policy to enact? Not necessarily. For some of these people, this “job” is the lifeline to their sense of self-worth and to their social connection to the community. Eliminating that serves no useful purpose and could have the effect of leaving these people with few alternatives. Is it better for them to attend an adult day health program? Is it better for them to stay home all day? Clearly the goal should be to transition them to competitive employment. But if that is not feasible, we believe that there needs to be a full continuum of options available.

What we see as the more serious problem is the way the current system operates. Employers are required to conduct productivity studies to demonstrate that an individual with a disability is “less productive” in order to pay them the lower wages. In our experiences we have investigated abuses of the system and what we have seen is that

the employers do not fairly rate the ability of the workers and so that is why they are being paid lower wages. The problem is compounded because the government overseers often lack the resources to independently analyze the accuracy or veracity of the employer ratings and that too is a major cause of the lower wages being paid. We believe that if there was better enforcement of the employers and the ratings that they submit, then the "exploitation" would be substantially reduced.

We are also concerned about the lack of appropriate services available in Hawaii. We do not want to see people staying home and watching TV as the alternative to their current placement in a sub minimum wage facility. The agencies that are supposed to assist them with employment do not always do so. For example, we have a dysfunctional Division of Vocational Rehabilitation and no new people are getting services. They recently entered into an Order of Selection so right now nobody is getting VR services unless they have an existing IPE. Even for those with an IPE we recently had several situations where VR told these clients they were "out of money" and would not receive services. Mismanagement over there has been the norm for years. We also have a DD system that has been getting increasingly restrictive in its eligibility criteria as people who should be receiving DD services are being told they are too high functioning. In theory those who are higher functioning should be good candidates for employment but without VR services or supported employment services it makes it much harder.

In sum, if the legislature truly wants to encourage the competitive employment of people with disabilities we believe the answer is not necessarily to eliminate the sub minimum wage but to provide more resources and oversight of the Division of Vocational Rehabilitation and the Developmental Disabilities Division so that they will serve individuals with disabilities in the manner they were intended to.



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TESTIMONY BEFORE THE SENATE COMMITTEE ON WAYS AND MEANS

RE: SB 3023, SD 1 – RELATING TO MINIMUM WAGE

WEDNESDAY, FEBRUARY 28, 2018

COREY ROSENLEE, PRESIDENT
HAWAII STATE TEACHERS ASSOCIATION

Chair Dela Cruz and Members of the Committee:

The Hawaii State Teachers Association **supports SB 3023, SD 1**, relating to minimum wage.

Hawai'i residents face the highest housing costs in the nation, at more than twice the national average. Minimum wage workers in the islands must complete 116 hours of work per week to afford a modest one-bedroom apartment at fair market value and 139 hours per week to afford a two-bedroom, which amounts to working 20 hours a day with no days off all year. That's impossible for anyone, especially for individuals with disabilities.

It is unacceptable, then, that we allow disabled individuals to be paid a subminimum wage. Many of these individuals were once special education students, who were guaranteed a free and appropriate education under the Individuals with Disabilities Education Act and promised a life filled with opportunities to realize their full potential. Yet, written in 1938, the Fair Labor Standards Act (FLSA) discriminates against people with disabilities by permitting employers to pay disabled workers less than the federal minimum wage. This provision is echoed in HRS §387-9, but is based on the mistaken idea that disabled employees are less productive than their able-bodied colleagues. Many employment programs have come about since the mid-20th Century to assist people with disabilities in acquiring and using essential job skills.

A subminimum wage disrespects the contributions of disabled workers. Research shows that the subminimum wage model costs more, while inspiring lower rates of productivity. After more than seventy-five years of demonstrated failure, it is time to invest in more effective models of employment that are successful at advancing the workplace prospects of disabled individuals who were previously—and egregiously—thought to be unemployable.

To ensure that our special needs children receive equal economic opportunities upon entering the workforce, the Hawaii State Teachers Association asks your committee to **support** this bill.

SB-3023-SD-1

Submitted on: 2/26/2018 1:34:53 PM

Testimony for WAM on 2/28/2018 10:45:00 AM

Submitted By	Organization	Testifier Position	Present at Hearing
Self Advocates	Testifying for Hawaii Self Advocacy Advisory Council (non-profit organization)	Oppose	Yes

Comments:

My name Renee Manfredi. I am the President of the Hawaii Self Advocacy Advisory Council. We have nearly 200 members statewide.

Our members represent individuals with disabilities and we are in support of abolishing; less than minimum wage exceptions for individuals who are elderly and individuals with disabilities. We strongly feel there is never a time to pay an adult less than minimum wage. Too many people try to protect us and feel something is better than nothing, but that type of thinking has kept us under employed. Please help us protect our rights and forbid employers from ever paying us below minimum wage.

We respectfully request you put a sunset date on this bill of two years to give us time to help the individuals with disabilities who are in sub-minimum jobs today, find competitive employment.

Thank you for this opportunity to provide testimony opposing allowing adults with disabilities to be paid sub-minimum wage.



Aloha Chair Dela Cruz, Vice Chair Keith-Agaran, and members of the Senate Ways & Means Committee,

On behalf of the nearly 600 registered members of the Young Progressives Demanding Action – Hawai‘i, I would like to express **strong support** for SB3023.

Current labor laws unjustly prohibit workers with disabilities from reaching their full vocational and socioeconomic potential.

Written in 1938, Section 14(c) of the Fair Labor Standards Act (FLSA) discriminates against people with disabilities. The provision allows the Secretary of Labor to grant Special Wage Certificates to employers, permitting them to pay workers with disabilities less than the federal minimum wage. This is based on the false assumption that disabled workers are less productive than non-disabled workers, but successful employment models have emerged in the last 75 years to assist people with significant disabilities in acquiring the job skills needed for competitive work. Section 14(c) sustains segregated sub-minimum wage workshops that exploit disabled workers, paying some only pennies an hour for mundane, repetitive tasks.

Section 14(c) authorizes employers to pay workers with disabilities sub-minimum wages while they are trained to perform mundane tasks that do not build capacity or transfer into skills necessary to transition into other employment options. This practice reinforces the stigmatic misconception that people with disabilities are less productive and creates an artificial barrier to future employment opportunities.

The sub-minimum wage model fails to provide adequate training or employment to disabled workers. Data shows that less than 5 percent of the 400,000 workers with disabilities in segregated sub-minimum wage workshops will transition into competitive integrated work. Moreover, research shows that the sub-minimum wage model costs more but actually produces less! In fact, workers must unlearn

the useless skills they acquire in order to obtain meaningful employment. It is poor policy to reward such failed programs with wage exemptions, preferential federal contracts, and public and charitable contributions.

Despite the misconception that section 14(c) incentivizes employers to hire people with disabilities, in 2015 the employment gap between people aged 18-64 with disabilities who were employed (34.9 percent) and people without disabilities who were employed (76.0 percent), was 41.1 percentage points.

Additionally, the 14(c) program requires minimal data collection and analysis of the 14(c) certificate holders, the employment resources provided to workers paid sub-minimum wages, and employment outcomes achieved. This has led to the arbitrary calculation of wages without holding these employers accountable.

After more than 75 years of demonstrated failure, it is time to invest in proven, effective models for employment. Section 14(c) sustains the same segregated sub-minimum wage environments that existed in 1938 and has proven to be extremely ineffective and offers no incentive for mainstream employers to hire people with disabilities. The EmploymentFirst Movement promotes new concepts such as “supported” or “customized” employment that are successful at producing competitive integrated employment outcomes for individuals with significant disabilities that were previously thought to be unemployable.

A growing number of entities have already stopped relying on section 14(c) and have voluntarily withdrawn their certificates. Consequently, in 2011, 420,000 people with disabilities were paid sub-minimum wages under the 14(c) program. Today, only 194,832 people with disabilities continue to receive sub-minimum wages.

The Republican and Democratic party platforms in 2016 both called for an end to sub-minimum wages for people with disabilities. In 2016, a committee tasked by Congress to increase competitive integrated employment opportunities for workers with disabilities recommended the phase-out of Section 14(c). Finally, more than 80 different disability organizations support the repeal of Section 14(c) of the Fair Labor Standards Act.

The proposed federal Transitioning to Integrated and Meaningful Employment Act will responsibly phase out Section 14(c) over a three year period and will eventually repeal the antiquated and discriminatory practice of paying people with disabilities sub-minimum wages. Americans with disabilities will no longer be trapped in segregated sub-minimum wage workshops. Current service providers will have three years to transition to a proven competitive integrated training and employment business model that assists individuals with even the most significant disabilities obtain real jobs at real wages. But there is no need to wait for this act to pass and be implemented. Hawaii can take a leadership position in advancing fair labor practices and human rights for persons with disabilities by passing SB3023 at the state level now, sending a strong statement that, here in the Aloha State, we treat our disabled brothers and sisters with equal respect and the dignity they deserve in the workplace.

Mahalo,

Will Caron
Social Justice Action Committee Chair

Young Progressives Demanding Action – Hawai‘i



46-063 Emepela Pl. #U101 Kaneohe, HI 96744 · (808) 679-7454 · Kris Coffield · Co-founder/Executive Director

**TESTIMONY FOR SENATE BILL 3023, SENATE DRAFT 1, RELATING TO
MINIMUM WAGE**

**Senate Committee on Ways and Means
Hon. Donovan M. Dela Cruz, Chair
Hon. Gilbert S.C. Keith-Agaran, Vice Chair**

**Wednesday, February 28, 2018, 10:45 AM
State Capitol, Conference Room 211**

Honorable Chair Dela Cruz and committee members:

I am Kris Coffield, representing IMUAlliance, a nonpartisan political advocacy organization that currently boasts over 400 members. On behalf of our members, we offer this testimony in strong support of Senate Bill 3023, SD 1, relating to minimum wage.

Hawai'i residents face the highest housing costs in the nation, at more than twice the national average. Researchers who authored the National Low Income Housing Coalition's *Out of Reach 2017* report found that a full-time worker would need to earn \$35.20/hour to afford a two-bedroom apartment at fair market value in our state, with Honolulu experiencing a 67 percent increase in fair market rent between 2005 and 2015. Average rent for a two-bedroom unit surpassed \$2,000 in recent years, with **minimum wage workers needing to log 116 hours per week to afford a modest one-bedroom apartment at fair market value and 139 hours per week to afford a two-bedroom**—a number that is equivalent to working 20 hours a day with no days off year-round. In the past three years alone, Honolulu rent has increased by more than 25 percent. While 43 percent of Hawai'i residents are renters (a number that does not include individuals and families renting outside of the regulated rental market), they earn an average wage of \$15.64/hour, over \$8.00 less than the minimum housing wage for the islands and scarcely enough to meet their basic needs, forcing them to take second and third jobs that, quite frequently, pay minimum wage. One out of every four households in Hawai'i report that they are “doubling up” or are three paychecks or less away from being homeless, per the Hawai'i Appleseed Center for Law and Economic Justice. Additionally, 54 percent of households are cost-burdened, meaning that they pay more than 30 percent of their income for housing costs, a number that rises to 83 percent of extremely low-income households. Homelessness is directly tied to our state's exorbitant cost of living and penchant for catering to people who use the islands as their own private Monopoly

board. We beseech you to seek innovative ways of making Hawai'i more affordable for our economically disadvantaged neighbors and hardworking families, who are, far too often, the same slice of our state's population.

Our state's cost of housing has skyrocketed over the last decade, leaving many families searching for affordable alternatives, in shelters, or on the streets. For context, the median price of condominiums on O'ahu increased 6 percent in the summer of 2017 to a record \$425,000, while the median price for single-family homes increased by 3 percent to \$795,000, according to the Honolulu Board of Realtors, a number that they expect to increase by at least another 5 percent in 2018. Average fair market rent for two-bedroom apartments in *outlying* communities in the City and County of Honolulu now exceeds \$2,700, with the cost of a four-bedroom home in urban Honolulu now exceeding \$1.1 million. At least 43 percent of residences in Hawai'i are owner unoccupied, according to the National Low-Income Housing Coalition, meaning that nearly 50 percent—and by some estimates well over half—of Hawai'i's homes are likely investment properties. Many of those properties, in turn, are owned by mainland and foreign buyers, whose real estate market speculation is a prime driver of Hawai'i's highest-in-the-nation cost of housing. According to a study released in May of 2016 by the Hawai'i Department of Business, Economic Development, and Tourism, there are “clear distinctions” between the average price of homes bought by local residents, mainlanders, and foreigners. Analyzing purchases made between 2008 and 2015, DBEDT found: “The average sale price was highest among foreign buyers. The average sale price of the total of 5,775 homes sold to foreign buyers from 2008 to 2015 was \$786,186, 28.3 percent higher than the average sale price to the mainlanders (\$612,770) and 64.7 percent higher than the average sale price to local buyers (\$477,460).”

It is unconscionable that state and federal laws include a loophole allowing disabled individuals to be paid less than the minimum wage. Current labor laws unjustly prohibit workers with disabilities from reaching their full vocational and socioeconomic potential. Written in 1938, Section 14(c) of the Fair Labor Standards Act (FLSA) discriminates against people with disabilities by empowering the Secretary of Labor to grant Special Wage Certificates to employers, permitting them to pay disabled workers less than the federal minimum wage. This provision, mirrored in Hawai'i Revised Statutes §387-9, is based on the immoral assumption that disabled employees are less productive than their able-bodied coworkers. Successful employment models have emerged in the last seventy-five years to assist people with significant disabilities in acquiring the job skills needed for competitive work, giving lie to the theoretical framework for paying disabled employees a subminimum wage.

The subminimum wage model is an affront to the economic contributions of disabled workers. Data shows that less than 5 percent of the 400,000 workers with disabilities in segregated subminimum wage workshops will transition into competitive integrated work. Moreover, research shows that the subminimum wage model costs more, while promoting less productivity. In fact, workers paid a subminimum wage often must unlearn the habits they acquire in such

workshops in order to obtain and carry out meaningful employment, which they repeatedly prove able to do. It is poor policy to reward failed programs with wage exemptions. After more than seven decades of the abhorrent subminimum wage practice, it is time to invest in proven, effective job models for disabled workers—such as “supported” or “customized” employment—that successfully advance positive, competitive, and integrated employment outcomes for individuals once deemed to be unemployable. Disabled workers deserve to be paid what they’ve earned, not discriminated against and cast into financial hardship.

Mahalo for the opportunity to testify in support of this bill.

Sincerely,
Kris Coffield
Executive Director
IMUAlliance



Pono Hawai'i Initiative

Josh Frost - President • Kau'i Pratt-Aquino - Secretary • Patrick Shea - Treasurer
Kristin Hamada • Nelson Ho • Summer Starr

Wednesday, February 28, 2018

Relating to Senate Bill 3023 Senate Draft 1
Testifying in Support

Aloha, Chair Dela Cruz, Vice-Chair Keith-Agaran, and Members of the Senate
Committee on Ways and Means,

The Pono Hawai'i Initiative (PHI) **supports SB3023 SD1 Relating to Minimum Wage**,
which includes persons with disabilities under the minimum wage requirements.

PHI believes all labor performed by workers should be valued with at least a basic
minimum wage. This includes those individuals and employees who may have any kind
of mental or physical impairment.

It is laudable that there are employers who provide opportunities for impaired individuals
who may not otherwise find jobs of any kind and we congratulate those employers. PHI
understands the difficulty presented to those employers by this bill, however we also
believe workers should be treated with respect, by their employers and by the law. This
includes ensuring they are entitled to the same minimum wage as any other employee.

Wage or other kinds of discrimination on the basis of impairment is not OK and we urge
passage of this bill.

Mahalo for the opportunity to testify,
Gary Hooser
Executive Director
Pono Hawai'i Initiative, an organization member of the Common Good Coalition



Live the life you want.

SUPPORT Senate Bill 3023, Senate Draft 1
PLEASE PASS UNAMENDED

DECISION MAKING

Wednesday, February 28, 2018

10:45 AM

Conference Room 211

State Capitol

415 South Beretania Street

COMMITTEE ON WAYS AND MEANS

Senator Donovan M. Dela Cruz, Chair

Senator Gilbert S.C. Keith-Agaran, Vice Chair

To the Senate Committee on Ways and Means:

Mahalo for taking the time to consider this bill, which addresses one of the most pressing civil rights issues of today in Hawaii. In our state, people with disabilities do not currently receive the protection of minimum wage laws, and we respectfully request that exemptions allowing employers to pay us subminimum wages be eliminated.

Employers who exploit people with disabilities by paying them subminimum wages will argue that their employees are simply not productive enough to be worthy of the minimum wage. They assume that workers with disabilities are inherently less productive; as a result, everything that happens thereafter is contaminated by low expectations.

In a sheltered workshop, people with disabilities are essentially guaranteed employment, but they are not guaranteed minimum wage. It is supposed to be training, but people almost never transition out of subminimum-wage work environments. Federal reports demonstrate that, out of all the employees who begin working in these work environments, only 5 percent of them ever reach the point of earning a minimum wage. This 95 percent failure rate is frequently blamed on the employees' disabilities, but properly trained rehabilitation professionals know that it is a product of low expectations and lack of proper interventions.

These sweatshops claim that they pay people according to productivity, but they do not. Sheltered workshop wages are forecasted by a speed test every six months. The productivity assessment is forward-looking rather than backward-looking. In a job where people are truly paid according to productivity, their pay for a given day is based on how productive they were that day, not on an arbitrary speed test that was performed six months beforehand.

When we put people in subminimum-wage sheltered workshops, their productivity is assessed without regard to their individual talents. At best, their productivity is only assessed in the context of the work that the sheltered workshop has pre-selected as 'appropriate for people with disabilities.' For example, if a sheltered workshop does not employ computer programmers, they will not assess the employee for his or her ability to be a computer programmer. This practice prevents people from reaching their real potential. Their productivity is a function of the suffocating environment known as the subminimum-wage sheltered workshop.

The sheltered workshop system takes people and systematically tells them that they're not as good as the rest of the workforce. The workshops claim that they are focused on the individual, but civil rights must apply to all individuals. Some of the sweatshops argue that the jobs are not primarily for pay, that they are primarily for fulfillment and feelings of importance in the world. It is not difficult in one of these sweatshops to keep a person believing that he or she is not good enough to reach for a competitive job.

These tax-exempt non-profits collect charitable donations, and they present themselves as doing good work, but they are not required to do right by their employees. They can eat up government contracts and grants while disability benefits pay the employees' real costs of living. This allows the employees to stay on disability benefits for the rest of their lives while the sweatshops do not have to pay real wages. There is no incentive to innovate and compete. They say they're market-driven and that they must increase their bottom line in order to be around for the next day, but they are not innovating. The sweatshops for the disabled have no incentive to pay their workers a minimum wage, and they have no incentive to make their workers more productive. They profit immensely from keeping workers unproductive, and they have financial incentives to keep them in the sweatshops. Edward Lazear, a Stanford economist and the father of personnel economics, teaches us that, in order to be most effective, a productivity incentive must be given to the highest levels of management because management creates the environment where productivity happens. These sweatshops demonstrate exactly why he is right.

Nobody is going to be thrown out on the street because this bill passes unless it is a political stunt by the sweatshops to attempt to protect their exploitation interests on the mainland. If people with disabilities want a day program where they can go enjoy themselves, those already exist. If a person wants to go to a sheltered workshop and volunteer, they have every ability to do that. If a person with a disability wants to do an internship with or without a stipend, they can still do that. If a person is going to work for pay, that person should be paid without regard to his or her disability.

Hawaii is an Employment First State. In 2016, the Employment First State Leadership Mentor Program offered this Vision Statement:

“Through Employment First partnerships, people with disabilities shall have access to competitive integrated employment. Moreover, employment in the community is the first service option for individuals with disabilities.”

The following state leaders signed the Employment First State Leadership Mentor Program:

- Allicyn C.H. Tasaka, Executive Director, Workforce Development Council
- Linda Chu Takayama, Director, Department of Labor and Industrial Relations
- Leslie Wilkins, Chair, State Workforce Development Council
- David DeLuz, Jr., Chair, Hawaii County Workforce and Development Board
- Pankaj Bhanot, Director of Human Services, Department of Human Services
- Deborah Miyao, Acting Adult Education Director, State of Hawaii, Department of Education
- Virginia Pressler, MD, Director of Health, State of Hawaii, Department of Health
- Waynette K.Y. Cabral, Executive Administrator, Developmental Disabilities Council
- Patricia A. Morrissey, PhD, Director, Center on Disability Studies, University of Hawaii

Our state has also received federal funding through the Disability Employment Initiative for the transition. Critics of this bill may argue that we do not have the supports in place to get our people out of subminimum wage sheltered workshops. We do. If the people who should be providing quality services to people with disabilities are falling short, we should not continue to maintain low expectations for them. If we keep the bar low, we will always get poor results. If we continue to allow them to offload people with disabilities into subminimum-wage sheltered workshops, they will continue to do it, even though it contradicts our Employment First agreement.

Organizations of people with disabilities, both locally and nationally, have called for the end of subminimum wages for workers with disabilities. The people who are subject to this exploitation DO NOT want this exploitation to continue. Please allow us to speak for ourselves. The organizations of people with disabilities, not our custodial service providers and not third-party agencies, are the experts on our own capacity and equality.

This movement has gained much support. At the federal level, both Congresswoman Colleen Hanabusa and Congresswoman Tulsi Gabbard have cosponsored the Transitioning to Integrated and Meaningful Employment (TIME) Act (HR 1377), which will, if passed, end the practice of paying subminimum wages to workers with disabilities throughout the country. The Oahu County Democrats passed a resolution at the County Convention in 2017 calling for the end of subminimum wages for workers with disabilities. The Democratic National Committee has made it part of their platform, as well, and so has the Republican National Committee. It is just good for everyone if we end subminimum wages for workers with disabilities.

The academic research is clear; subminimum wage employment just does not work for us. Rob Cimera's research demonstrates that sheltered workshops make people less productive than they were before they entered the workshops. Sheltered employment is demonstrated to cost more than supported employment. Supported employment sometimes involves a third-party subsidizing the employee's wage. Supported employment otherwise involves job coaching and other supportive services to help get the employee up to speed to be a truly competitive employee. It can be difficult for a governing body to imagine paying part of someone's wage in the beginning,

but they eventually transition off that program, largely because they are in an environment with real-world expectations. Then, they need not depend on disability benefits as much or at all.

Some people think that subminimum wages are only being paid in special, segregated work environments. The reality, though, is that the entities holding these special wage certificates can act as subcontractors for other businesses. I have a family member who works as a dishwasher at a large restaurant chain, and she is paid subminimum wages. The restaurant subcontracts with the sheltered workshop, which takes the cream off the top of her paycheck and usually gives her about two or three dollars per hour. I know she can do the work as well as the able-bodied employees next to her, but it's legal to pay her less because she's disabled. She's in an integrated setting, doing real work, and getting paid subminimum wages. It continues right under our noses.

People with disabilities want to be treated like first-class citizens in Hawaii and have the same rights as other people to work to earn the things we need. We want to reach our full potential. People with disabilities are human beings, and we deserve to be paid like it. We do not want to live our entire lives depending on disability benefits because these sweatshops refuse to pay us like our able-bodied counterparts.

Some agencies have recommended that we should disembowel this bill by limiting the payment of subminimum wages to only workers with intellectual disabilities. This must be corrected. It is easy to diagnose anyone with a simple intellectual disability in order to continue qualifying them for subminimum wages. It furthermore demonstrates no understanding of equality nor the aloha spirit.

The State of Hawaii has already become an Employment First State with a full Leadership Mentor Program. We have already set up the support structures to serve and empower people with disabilities. The organizations of people with disabilities have spoken, and we want to eradicate the payment of subminimum wages to our people. The only opposition we have faced comes from the sweatshops which exploit us and the agencies which are paid to monitor how they exploit us. We have heard all their arguments against this bill for many decades, and we are still asking for it.

We respectfully request that you listen to us about how we want to be treated. Low expectations are the true obstacles between people with disabilities and our dreams. Our disabilities are not what hold us back; it is low expectations and custodial policies like the one this bill will eliminate.

Please pass Senate Bill 3023, Senate Draft 1. Please tell us that you believe that we are all equal.

Mahalo nui loa,

Justin M. Salisbury, MA, NOMC, NCRTB, NCUEB
Legislative Committee Chair
Honolulu Chapter
National Federation of the Blind of Hawaii
1617 Kapiolani Boulevard
Unit 1402
Honolulu, Hawaii 96814

National Federation of the Blind of Hawaii

Nani Fife, *President NFBHI* | P.O. Box 4372, Honolulu, HI 96812-4372 | 808-595-6123 | www.hawaii.nfb.org

Chair Dela Cruz
Vice Chair Keith-Agaran
Senate Committee on Ways and Means

Wednesday, February 28, 2018
10:45 AM

SUPPORT SENATE BILL 3023, SENATE DRAFT 1

PLEASE PASS THIS UNAMENDED

Aloha Chair Dela Cruz, Vice Chair Keith-Agaran, Members of the Senate Committee on Ways and Means,

My name is Jun Shin. I am 18 years old, a freshman at the University of Hawaii at Manoa, and a board member at-large for Young Progressives Demanding Action – Hawaii. Thank you for your hard work in considering this, as it addresses a very important civil rights issue. The issue of subminimum wage is not really talked about, and I personally found out about this recently thanks to a friend in the blind community who has been doing his best to fight for this issue, and it really is worrying that more of us don't know about it as it really affects people with disabilities who want to work hard and succeed.

In Hawaii, people with disabilities do not currently receive the protection of minimum wage laws, and I respectfully request that exemptions allowing employers to pay them subminimum wages be eliminated. Some agencies have proposed that we should separate people with certain types of disabilities and grant equality to them while leaving people with other types of disabilities behind as second-class citizens.

As the great “philosopher” Lilo once said, “Ohana means family. Family means nobody gets left behind or forgotten”. We cannot leave our brothers and sisters behind and separate them based on disability, as it contradicts with the desire for economic equality that led to this measure being created and coming this far in the legislative process.

I am fighting to give workers with all types of disabilities equal minimum wage protection because I really think it's the right thing to do and it's an issue that simply should no longer exist as we have made it clear a long time ago that discrimination is wrong. We as a society must make sure that never again, will the desire to reach your full potential be hindered based on your disabilities as they don't determine who you are as a person, and what you can do as an individual. Simply put, when all our brothers and sisters with disabilities succeed, we as a state and a country succeed. We are fighting the good fight through this measure, so **I hope that you will pass SB3023 unamended.**

Thank you for your hard work and deliberation on this issue,

Jun Shin,
Board Member At-Large
Young Progressives Demanding Action – Hawaii
1561 Kanunu St. #2106 Honolulu, HI 96814
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Email: junshinbusiness729@gmail.com

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Hawaii State Senate

Committee Ways and Means
Senator Donovan M. Dela Cruz, Chair
Senator Gilbert S.C. Keith-Agaran, Vice Chair

LATE

S.B. 3023 SD1
February 28, 2018
10:45 a.m., Conference Room 211

Dear Chair Dela Cruz, Vice Chair Keith-Agaran, and members of the Ways and Means Committee,

Lanakila Pacific opposes S.B. 3023 which seeks to amend HRS section 387-9 to repeal the exemption authorizing compensation of persons with disabilities at less than minimum wage. We oppose the bill because it would eliminate a tool that allows people with intellectual disabilities to remain employed. At Lanakila Pacific, the repeal will eliminate paid training options for many who are eager to enter the job market but have a steeper learning curve to climb. The bill will have unintended consequences for a population of individuals who have no other work alternative. It will further marginalize a population that has already been left out of many societal activities.

Nationally only 9-11% of all employees with disabilities are paid a special minimum wage, according to Source America. Approximately one third of all workers paid special minimum wages had intellectual disabilities or other developmental disabilities as their primary impairment and 46% had multiple disabilities, according to a GAO 2001 report. Those benefitting from the special minimum wage are a small percentage of people with disabilities, which amounts to a total of 75 individuals in Hawaii. However small, the number does not reflect the severe impact that the loss of a job will have on the sense of self-worth, ability to contribute with their own labor, and social connection to the community for those individuals who are least able to advocate for themselves.

Prior to obtaining a special certificate, an agency must qualify under Section 14(c) of the Fair Labor Standards Act (FLSA) and obtain a companion certificate from the Hawaii Department of Labor and Industrial Relations (DLIR). DLIR reviews the employer's time records, payroll records, and time study information to determine whether the employer is complying with wage laws and certifying the proposed wages are commensurate with that person's productivity. There are seven businesses in Hawaii that are certified to pay a special minimum wage.

Lanakila Pacific is a certificate holder and utilizes the special minimum wage primarily in our job training programs. As a trainee's productivity increases their wage increases. The productivity studies and the corresponding wage adjustments required to maintain the certificate provide incentive for people with disabilities to increase productivity. The law requires a productivity study every six months. Lanakila Pacific conducts productivity studies each quarter. Since the productivity of the trainee is compared to a norm relative to the productivity of experienced workers without disabilities, Lanakila Pacific also conducts prevailing wage studies twice a year. Both measurement tools exceed standards required

1809 Bachelot Street
Honolulu, Hawaii 96817
Phone: 808-531-0555
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www.lanakilapacific.org

An Equal Opportunity Employer



by law and give our trainees many opportunities to demonstrate increased productivity and receive a higher wages.

As a trainee nears 75% productivity we work with the trainee, their State Division of Vocational Rehabilitation Counselor and their support team to consider competitive employment at or above minimum wage. In FY 2017, 54 trainees were paid below minimum wage during their 12 to 16 month training period. Of the 20 trainees who graduated from the program, 16 secured competitive employment in food service, custodial or retail.

Thank you for the opportunity to provide testimony in opposition to this measure. We hope you will recognize the value of a special minimum wage certificate and the positive impact it has on the lives of people with disabilities and allow for the use of such certificates to continue.

Respectfully submitted,

Marian E. Tsuji
President & CEO

Rona Fukumoto
VP for Programs and
Mission Advancement



Progressive Democrats of Hawai'i

<http://pd-hawaii.com>

1418 Mokuna Pl, HON HI 96816

email: info@pd-hawaii.com

February 24, 2018

To: Senate Committee on Ways and Means
Senator Donovan M. Dela Cruz, Chair
Senator Gilbert S.C. Keith-Agaran, Vice Chair

Re: SB 3023, SD 1 – Minimum Wage for Disabled Persons

Hearing: (Decision-Making) Wednesday, February 28, 2018, 10:45 a.m. Room 211

Position: Strong Support

Members of the Progressive Democrats of Hawai'i were astonished to learn last year that Hawai'i and many other states tolerate a paternalistic policy in which persons with disabilities are employed at sub-minimum wages that are not "livable" wages and are certainly intolerable in this society and in our present very difficult economy in Hawai'i. This situation must stop and HRS Section 387-9 must be appropriately amended.

We strongly support SB 3023, SD 1, in its present form, and we urge the Committee to pass it UNAMENDED.

Thank you very much for the opportunity to testify on this important matter for the disabled and elderly.

Alan B. Burdick, co-chair
Progressive Democrats of Hawai'i
Burdick808@gmail.com / 486-1018

SUPPORT Senate Bill 3023, Senate Draft 1

PLEASE PASS UNAMENDED

COMMITTEE ON WAYS AND MEANS
Senator Donovan M. Dela Cruz, Chair
Senator Gilbert S.C. Keith-Agaran, Vice Chair

DECISION MAKING

Wednesday, February 28, 2018
10:45 AM
Conference Room 211
State Capitol
415 South Beretania Street

To the Senate Committee on Ways and Means:

Thank you for taking the time to consider this bill, which addresses one of the most pressing civil rights issues of today in Hawaii. In our state, people with disabilities do not currently receive the protection of minimum wage laws, and I respectfully request that exemptions allowing employers to pay them subminimum wages be eliminated. Some agencies have proposed that we should separate out people with certain types of disabilities and grant equality to them while leaving people with other types of disabilities behind as second-class citizens; in Hawaii, nobody should be left behind.

Here's why I believe it is our kuleana to give equal minimum wage protections to workers with all types of disabilities:

It is shocking and appalling that people with disabilities can routinely be paid sub-minimum wages.

It is even more shocking that employers who receive government grants, tax credits, and tax exemptions are allowed to pay people with disabilities sub-minimum wages. Civil rights apply to all Hawaii residents, all U.S. citizens and all human beings. No one should be treated as a second-class citizen. This also means that all persons, not just those with certain categories of disabilities, should receive minimum wage protection.

To justify sub-minimum wages, some employers argue that sheltered workshop programs are primarily a place for disabled persons to go for socialization and self-esteem, with employment and employment training of secondary importance. If this is so, such employers should take a good look at disabled persons and see the capable, educated, productive persons who are not defined by their disabilities. Employers can be more responsible, innovative and accountable in providing actual jobs, training, goals and assessment, instead of low expectations. Sheltered workshops should not be allowed to reap and keep funding while paying sub-minimum wage. There are other places, such as day programs, which disabled persons can attend as participants or volunteers to address their socialization and self-esteem needs. It is unacceptable to confuse or lump these programs together. The only ones

That's not work. That's not training. That's not right.

who benefit are the employers who receive funding, not the disabled persons who do not receive appropriate job training or employment and are in an environment which perpetuates low expectations while also paying them sub-minimum wages. If a person reports to work, that person should be paid at least the minimum wage, regardless of their disability. Please do not allow this unfair practice to continue.

Please pass Senate Bill 3023 without amendments.

Mahalo nui loa,

Rita Porter
45-577 Waikalua Place
Kaneohe, HI 96744
Member - National Federation of the Blind of Hawaii

That's not work. That's not training. That's not right.

SUPPORT Senate Bill 3023, Senate Draft 1

PLEASE PASS UNAMENDED

COMMITTEE ON WAYS AND MEANS
Senator Donovan M. Dela Cruz, Chair
Senator Gilbert S.C. Keith-Agaran, Vice Chair

DECISION MAKING

Wednesday, February 28, 2018
10:45 AM
Conference Room 211
State Capitol
415 South Beretania Street

To the Senate Committee on Ways and Means:

Thank you for taking the time to consider this bill, which addresses one of the most pressing civil rights issues of today in Hawaii. In our state, people with disabilities do not currently receive the protection of minimum wage laws, and I respectfully request that exemptions allowing employers to pay us subminimum wages be eliminated. Some agencies have proposed that we should separate out people with certain types of disabilities and grant equality to them while leaving people with other types of disabilities behind as second-class citizens; in Hawaii, nobody should be left behind.

Here's why I believe it is our responsibility to give equal minimum wage protections to workers with all types of disabilities:

People with disabilities who work are not sub-human, sub-citizens and should not be paid sub-minimum wages. We need to protect their civil rights and ensure that employers, including those who receive tax exemptions and grants to help the disabled, are no longer allowed to pay sub-minimum wages.

It is very difficult to get by living on minimum wage in Hawaii, even without a disability. Can you imagine daily life as a disabled person? If you are not blind, for example, you may not know that there are costs for things that sighted people take for granted. As a blind person, there are many accessibility devices that you need in order to function independently in your daily life. How could you afford these necessities if you work at a below minimum wage job, especially given the high cost of living in Hawaii? There are basic things we all need for daily life, like food, personal hygiene products, maybe a heavy box or bottle of laundry detergent. If you are blind, there is an additional cost to getting these things from the store to your door. This is not extravagant; it is just one example of real life.

There is no justification for paying disabled persons who are employed a sub-minimum wage. If grant money and tax benefits are provided to employers, they should use them to develop the workforce, meet standards, be accountable. They should not be allowed to take the funds, assume disabled persons are unproductive, and believe they are justified in paying their disabled employees

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substandard wages. This is a poor business model in any situation, but additionally, it ignores the abilities and potential of disabled employees. We need our legislators to protect the rights of all disabled persons in Hawaii.

Khamtoun Porter

45-577 Waikalua Place

Kaneohe, HI 96744

Member - National Federation of the Blind of Hawaii

That's not work. That's not training. That's not right.

COMMITTEE ON WAYS AND MEANS
Senator Donovan M. Dela Cruz, Chair
Senator Gilbert S.C. Keith-Agaran, Vice Chair

Wednesday, February 28, 2018
10:45 AM
Conference Room 211
State Capitol
415 South Beretania Street

POSITION: STRONG SUPPORT SB3023 SD1

To the Senate Committee on Ways and Means:

In our state, people with disabilities do not currently receive the protection of minimum wage laws, and we respectfully request that exemptions allowing employers to pay us subminimum wages be eliminated.

Employers who exploit people with disabilities by paying them subminimum wages will argue that their employees are simply not productive enough to be worthy of the minimum wage. They assume that workers with disabilities are inherently less productive; as a result, everything that happens thereafter is contaminated by low expectations.

Organizations of people with disabilities, both locally and nationally, have called for the end of subminimum wages for workers with disabilities. The people who are subject to this exploitation DO NOT want this exploitation to continue. Please allow them to speak for themselves. The organizations of people with disabilities, not our custodial service providers and not third-party agencies, are the experts on our own capacity and equality.

This movement has gained much support. At the federal level, both Congresswoman Colleen Hanabusa and Congresswoman Tulsi Gabbard have cosponsored the Transitioning to Integrated and Meaningful Employment (TIME) Act (HR 1377), which will, if passed, end the practice of paying subminimum wages to workers with disabilities throughout the country. The Oahu County Democrats passed a resolution at the County Convention in 2017 calling for the end of subminimum wages for workers with disabilities. The Democratic National Committee has made it part of their platform, as well, and so has the Republican National Committee. It is just good for everyone if we end subminimum wages for workers with disabilities. *Low expectations are the true obstacles between people with disabilities and their dreams.*

Ken Farm

Member-At-Large
Neighborhood Board No. 15
Kalihi-Palama

SB-3023-SD-1

Submitted on: 2/26/2018 10:22:04 AM

Testimony for WAM on 2/28/2018 10:45:00 AM

Submitted By	Organization	Testifier Position	Present at Hearing
Dawn Morais Webster Ph.D.	Individual	Support	No

Comments:

Let's make life a little easier for those who are already grappling with the challenges of disability and trying to not be a burden on society by ending wage discrimination against them. Please pass this bill. Our culture of aloha should not tolerate discrimination in any form, least of all against the most vulnerable.

SB-3023-SD-1

Submitted on: 2/26/2018 5:11:51 PM

Testimony for WAM on 2/28/2018 10:45:00 AM

Submitted By	Organization	Testifier Position	Present at Hearing
Javier Mendez-Alvarez	Individual	Support	No

Comments:

From: [Brandon Young](#)
To: [WAM Testimony](#)
Subject: Re: testimony
Date: Sunday, February 25, 2018 7:15:05 PM

Dear Sen. Dela Cruz and other Ways and Means Committee members,

My name is Brandon Young, and I am submitting this testimony on behalf of the National Federation of the Blind of Hawaii. I am submitting testimony in support of Senate Bill 3023 S. D. 1. I am in support of this measure. The measure would help to eliminate the payment of sub minimum wages to people with disabilities in the State of Hawaii. As a blind person, I face the harsh fact of employment with sub minimum wages. Luckily, I have a employer that pays me a fair wage to work for their company. I would hope that you would pass this measure out of your committee. I thank you again for your time and look forward to working with you in the future.

Sincerely,
Brandon Young

SUPPORT Senate Bill 3023, Senate Draft 1

PLEASE PASS UNAMENDED

COMMITTEE ON WAYS AND MEANS
Senator Donovan M. Dela Cruz, Chair
Senator Gilbert S.C. Keith-Agaran, Vice Chair

DECISION MAKING

Wednesday, February 28, 2018
10:45 AM
Conference Room 211
State Capitol
415 South Beretania Street

To the Senate Committee on Ways and Means:

Mahalo for taking the time to consider this bill, which addresses one of the most pressing civil rights issues of today in Hawaii. My name is Katie Keim. I reside at 2943 Kalakaua Ave. #304, Honolulu, HI 96815.

I am a blind woman in business owning my own company with over 40 employees. I hire people with disabilities and pay them the same wages as their non-disabled peers.

In our state, people with disabilities are not currently assured of being paid at least the minimum wage. As a blind person myself, I respectfully request that exemptions allowing employers to pay people with disabilities any amount below the minimum wage should be eliminated. Some have proposed that we should separate out people with certain types of disabilities and grant equality to them while leaving people with other types of disabilities behind as second-class citizens; in Hawaii, nobody should be left behind.

Under the present law employers are allowed to pay less than the minimum wage to anyone who has a disability, while being required to pay at least the minimum wage to anyone who does not have a disability. This policy has always been wrong but is especially wrong now in view of all of the services and supports that exist to help people with disabilities to perform/compete on equal terms on the job. Allowing employers the option to pay workers with disabilities below the minimum wage exploits these workers and simply enriches their employers. The only reason why employers continue to pay workers with disabilities below the minimum wage is that the law allows them to do so. The minimum wage is intended to protect workers against employer exploitation, and this should include protection for workers with disabilities as much as anyone else.

That's not work. That's not training. That's not right.

Please close this loophole and make a stand for equality on behalf of everyone who has a disability.

People with disabilities are human beings and deserve to be paid like it.
Please help us eliminate the payment of subminimum wages by supporting this bill.

I am in full support of this bill and encourage you to pass it into law, as a blind citizen and a member of the National Federation of the Blind of Hawaii.

Mahalo and Aloha,

Katie Keim

2943 Kalakaua Ave. #304

Honolulu, HI 96815

That's not work. That's not training. That's not right.

From: [Kyle Laconsay](#)
To: [WAM Testimony](#)
Subject: SB3023 SD1
Date: Tuesday, February 27, 2018 6:59:10 AM

I humbly ask that you pass Bill #SB3023 SD1 without amendment. This is extremely important to ALL of us in the blind community. Sincerely, Kyle Laconsay

Sent from my iPhone

From: [Raymond Catania](#)
To: [WAM Testimony](#)
Subject: Sub minimum wages for person"s with disabilities
Date: Tuesday, February 27, 2018 6:30:34 AM

Dear Chair Delaccruz and members of WAM,

I support SB3023. Person's with disabilities should be paid the same wages like everyone else. They should be treated with respect and not be taken advantage of. Their labor is just as important as the rest of the working population.

Mahalo,
Ray Catania from Puhi Kauai, lifelong voting Democrat